

**COURT OF COMMON PLEAS  
FOR THE STATE OF DELAWARE**

KENT COUNTY COURTHOUSE  
38 THE GREEN  
DOVER, DELAWARE 19901  
PHONE: (302) 735-3910

CHARLES W. WELCH, III  
JUDGE

October 8, 2018

Richard Zemble, Esq.  
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Wilmington, DE 19801

Rich Hogan, Esq.  
Hogan & Vandenberg, LLC  
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Wilmington, DE 19801

Kevin Smith, Esq.  
Deputy Attorney General  
Department of Justice  
102 W. Water Street  
Dover, DE 19901

RE: State of Delaware v. Nnamdi Awomokorie  
Case No.: 1705019752  
Cr.A.No.: MK17-05-1714 (Theft < \$1500)

Motion for Sentence Modification

Dear Mr. Zemble, Mr. Hogan and Mr. Smith:

The defendant filed a Motion for Sentence Modification with the Court on August 29, 2018, for the above-referenced matter. In the motion, the defendant requests that the Court modify his sentence for Theft of Less Than \$1500 to reduce the Level V time for which the defendant was sentenced from one year to six months. The State opposes the motion. Please be advised that after carefully considering the matter and the arguments of the parties, the defendant's Motion for Sentence Modification is denied as being time barred.

The defendant was originally sentenced when he pled guilty to Theft of Less Than \$1500 on June 1, 2017, to be imprisoned for one year Level V suspended for one year Level III probation. It should be noted that at the time, the defendant had exhibited a history of domestic violence and was also sentenced to imprisonment for one year Level V, suspended after four days, for one year Level III probation for an Assault Third conviction. On July 7, 2017, the defendant's probation for his Theft of Less than \$1500 sentence was violated and he was resentenced to imprisonment at one year Level V

suspended for fifteen days at Level IV VOP Center, followed by one year Level III probation. Finally, on April 18, 2018, the defendant's probation for his Theft of Less Than \$1500 sentence was discharged unimproved. On that date, he was also sentenced for a violation of probation for his Assault Third conviction to imprisonment for one year Level V, suspended after 126 days with credit for 126 days served, with no probation to follow.

Interestingly enough, although the defendant has exhibited a history of domestic violence, with two Offensive Touching convictions and two separate Assault Third convictions since being admitted to the United States on December 26, 2015, as a Legal Permanent Resident, the sentence for his conviction for the above-referenced Theft of Less Than \$1500 charge has resulted in his detention by the Department of Homeland Security for potential deportation. The defendant's Motion for Sentence Modification would potentially assist him in preventing his deportation.

Motions to reduce a criminal sentence in the Court of Common Pleas are governed by Court of Common Pleas Criminal Rule 35(b). Under Rule 35(b), the Court may reduce a sentence of imprisonment on a motion made to reduce a sentence within ninety days after the sentence has been imposed.<sup>1</sup> The Court may only consider an untimely motion if "extraordinary circumstances" exist.<sup>2</sup> "In order to uphold the finality of judgments, a heavy burden is placed on the defendant to prove extraordinary circumstances when a Rule 35 motion is filed outside of ninety days of imposition of a sentence."<sup>3</sup> "Extraordinary circumstances" are circumstances that "specifically justify the delay;" are 'entirely beyond a petitioner's control;' and 'have prevented the applicant from seeking the remedy on a timely base.'<sup>4</sup>

The defendant's Motion for Sentence Modification was filed on August 29, 2018, which is well beyond the ninety day time limit for which such motions can be made under Rule 35(b). The sentence that has the defendant facing deportation was originally imposed on June 1, 2017. The defendant was then resentenced on July 7, 2017, when he violated probation. The Court notes that the defendant was discharged from probation unimproved on April 18, 2018. At that time, he was not resentenced as he was discharged. Therefore, it appears to the Court that the sentence for which the defendant is facing deportation was actually last imposed on July 7, 2017, over a year prior to his Motion for Sentence Modification. No "extraordinary circumstances" have been

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<sup>1</sup> Ct. Com. P. Crim. R. 35(b).

<sup>2</sup> *State v. Culp*, 152 A.3d 141, 145 (Del. 2016). The Court may also consider an application made pursuant to 11 Del. C. § 4217. However, that section of the Delaware Code is not applicable to the instant case since any application for modification of a sentence under § 4217 must be made by the Department of Correction and must be when the trial court has imposed an aggregate sentence of incarceration at Level V in excess of one year.

<sup>3</sup> *Id.* (quoting *State v. Diaz*, 2015 WL 1741768, at \*2 (Del. Apr. 15, 2015)).

<sup>4</sup> *Id.* (quoting *State v. Lewis*, 797 A.2d 1198, 1203-05 (Del. 2002)).

proffered to permit the Court to consider his motion outside the ninety day time limit. Therefore, it must be denied as time barred.

**IT IS SO ORDERED.**

Sincerely,

A handwritten signature in cursive script, appearing to read "Charles W. Welch, III".

Charles W. Welch, III

CWW:mek